# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

U.S. DISTRICT COURT STRICT OF MARYLAND

2006 MAR 15 P 3: 44

ERROL LEROY LEWIS,

v.

Plaintiff

CIVIL ACTION NO. L-05-1269 ALTHORE

LERK'S OFFICE

DEPUTY

UNITED STATES OF AMERICA

Defendant

# **MEMORANDUM**

Errol Leroy Lewis ("Lewis") challenges, on due process grounds, the government's forfeiture of a watch that he claims to own. Pending is the government's motion to dismiss or, in the alternative, for summary judgment. The motion must be denied. As is discussed more fully below, the ample case law supports the propositions that (i) the Court should construe a Rule 41(e) motion as a motion to set aside forfeiture pursuant to 18 U.S.C. § 983(e), and (ii) when a forfeiture notice to a prisoner is returned undelivered, the government has an obligation to take steps to locate him and to send the notice to the prison where he is being housed. Moreover, under the facts of this case, the notice of forfeiture that was mailed to Lewis's girlfriend does not serve as notice to Lewis.

#### I. Introduction

The Drug Enforcement Administration ("DEA") seized a watch from a condominium where it arrested Lewis for drug violations. The DEA later initiated proceedings to forfeit the watch on the ground that it constitutes the proceeds of drug sales. The DEA sent notices of the proposed forfeiture, addressed to Lewis and his various aliases, to the condominium where the watch was seized and to a state prison where federal detainees are often housed. These notices

<sup>&</sup>lt;sup>1</sup> According to the United States, Lewis has a variety of aliases, including (i) Andrew Campbell, (ii) Darron Finley, (iii) Delroy Willis, (iv) Errol Moore, (v) Floyd Sinclaire Wilson, and (vi) Myrie and Trevor Moore.





were returned undelivered. Approximately a year later, Lewis learned from his girlfriend, who had received a separate notice from the DEA, that his watch had been forfeited. After he was convicted and sentenced for the underlying drug charges, Lewis filed suit, contending that the DEA had failed to provide him adequate notice before forfeiting the watch.

The DEA moved to dismiss Lewis's suit, arguing that the Court lacks jurisdiction over the case and that Lewis's complaint fails to include the necessary allegations for a due process claim. The Court, construing Lewis's papers liberally, finds that the Court has jurisdiction and that Lewis has stated a proper claim. Accordingly, the Court will deny the motion to dismiss.

The DEA also moved for summary judgment on the grounds that Lewis has no evidence that he owns the watch and that, in any event, the undisputed facts show that the DEA provided proper notice to Lewis. The Court disagrees that the existing record supports summary judgment in the government's favor. Lewis has filed an affidavit in which he states that he owns the watch. There is, therefore, a dispute of fact regarding ownership. In addition, the notices that the DEA sent to Lewis were returned undelivered, and the notice to his girlfriend was insufficient to notify him of the proceedings. Based on the current record, then, the Court concludes that notice was inadequate. Accordingly, the Court will deny the motion for summary judgment, with leave to re-file, at the end of discovery, with an explanation of the efforts, if any, that the DEA took to apprise Lewis of the pending forfeiture after the notices were returned undelivered.

### II. Facts

### A. DEA Seizes Property

In 1996, Lewis was indicted by a federal grand jury for drug offenses. He was a fugitive until November 14, 2003, when DEA agents arrested him at his girlfriend's condominium in

Laurel, Maryland. After the arrest, DEA agents seized jewelry, including a Rolex watch, from the residence. On November 19, 2003, Lewis was arraigned in federal court and ordered detained pending trial.

#### **B. DEA Initiates Administrative Forfeiture**

Contending that the jewelry constitutes the proceeds of drug sales, the United States initiated forfeiture proceedings in November 2003.<sup>2</sup> Because the jewelry was valued at less than \$500,000, the United States was allowed to administratively forfeit the jewelry without court involvement.<sup>3</sup> (See Docket No. 5, Ex. A(1) (stating property valued at \$21,500).)

Before it may administratively forfeit property, the DEA must (i) publish notice of its intention to forfeit the property "once a week for at least 3 successive weeks in a newspaper of general circulation in the judicial district in which the processing for forfeiture is brought" and (ii) send written notice "to each party who appears to have an interest in the seized article." 19 U.S.C. § 1607(a); 21 C.F.R. § 1316.75(a). The government may declare the property forfeited if no person files a timely claim for the property.<sup>4</sup> If a timely claim is filed, the government must apply to court to pursue forfeiture.<sup>5</sup>

# C. DEA's Notice of Forfeiture

The DEA prepared the following notices regarding the jewelry: (i) written notices for

<sup>&</sup>lt;sup>2</sup> See 21 U.S.C. § 881(a) (stating that such property is subject to forfeiture).

<sup>&</sup>lt;sup>3</sup> See 19 U.S.C. § 1607(a). Although on its face 19 U.S.C. § 1607 applies to forfeitures under customs laws, the drug statutes specifically provide that the procedures set forth in § 1607 likewise apply to administrative forfeitures in drug cases. See 21 U.S.C. § 881(d).

<sup>&</sup>lt;sup>4</sup> 19 U.S.C. § 1609.

<sup>&</sup>lt;sup>5</sup> <u>Id.</u> § 1608; <u>see also United States v. Minor</u>, 228 F.3d 352, 354 (4th Cir. 2000).